

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ANDRE MARTINEZ,	:	CIVIL NO. 3:13-CV-1475
	:	
Plaintiff,	:	
	:	
v.	:	
	:	(Magistrate Judge Carlson)
UNITED STATES OF AMERICA, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

This Federal Torts Claims action has been referred to the undersigned, upon the consent of all parties, for trial. The purpose of this order is twofold.

First, we are confirming the schedule for trial. The non-jury trial of this case shall take place on **December 7, 2015 at 9:30 a.m.** in the William J. Nealon United States Courthouse, Scranton, Pennsylvania, in a courtroom to be designated by the clerk.

In addition, we are addressing the issue of witnesses at this trial, a matter discussed in the telephonic pre-trial conference held on November 23, 2015. The parties' pre-trial memoranda (Docs. 64 and 66) reflect that the parties intend to call six common witnesses in this case, Messrs. Diltz, Prutzman, R. Johnson, Fosnot, Wall, and Pigos. These witnesses should be instructed to be in attendance at the time and date set for the commencement of this trial. In addition, the Plaintiff has indicated that he may

wish to call two other witnesses, both of whom appear to be correctional officials or care givers, D. Knapp and Dr. Edinger.

While the Defendant has objected to these witnesses as cumulative, and has indicated that Martinez should be required to pay witness fees and subpoena costs for these additional witnesses, out of an abundance of caution and in order to permit the Plaintiff, an inmate acting *pro se*, every opportunity to present his case we will not exclude the testimony of these witnesses as cumulative at this time. As for subpoena costs and witness expenses, while we recognize the legal force of the Defendant's argument, we request that the United States determine whether these witnesses would be available to testify briefly by video conference from U.S.P. Lewisburg, pursuant to Rule 43(a) of the Federal Rules of Civil Procedure, thereby avoiding these costs and expenses. We understand that this request may entail the calling of these witnesses out of order, and will accommodate the witnesses' schedules, if necessary. We request that the United States notify the court regarding the feasibility of video testimony on or before **December 3, 2015**.

So ordered this 25th day of November, 2015.

S/Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge